

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

UNITED STATES OF AMERICA,

-vs-

Case No. 6:09-cr-108-22GJK

GARRY S. MARTIN,

**Defendant.**

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**REPORT AND RECOMMENDATION**

This cause came on for consideration without oral argument on the following motion:

**MOTION: MOTION FOR PERMISSION TO APPEAL IN  
FORMA PAUPERIS AND AFFIDAVIT**

**(Doc. No. 141)**

**FILED: December 21, 2020**

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**THEREON it is RECOMMENDED that the motion be  
DENIED.**

On December 21, 2020, Defendant Garry S. Martin, a federal prisoner, filed a motion for leave to appeal *in forma pauperis* (the “Motion”). Doc. No. 141. Defendant is appealing the Court’s Order denying his motion for compassionate release. Doc. Nos. 138, 139.

Defendant fails to demonstrate that the appeal is taken in good faith.

Federal Rule of Appellate Procedure 24(a)(3) states the following:

A party who was permitted to proceed in forma pauperis in the district-court action, or who was determined to be financially unable to obtain an adequate defense in a criminal case, may proceed on appeal in forma pauperis without further authorization, unless:

(A) the district court--before or after the notice of appeal is filed--certifies that the appeal is not taken in good faith or finds that the party is not otherwise entitled to proceed in forma pauperis and states in writing its reasons for the certification or finding; or

(B) a statute provides otherwise.

*See also* 28 U.S.C. § 1915(a)(3) (“An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.”). A movant demonstrates good faith when he seeks appellate review of any issue that is not frivolous. *Coppedge v. United States*, 369 U.S. 438, 445 (1962). Defendant does not state the issues he is appealing, much less demonstrate that they are non-frivolous. Doc. Nos. 139, 141.

Accordingly, it is recommended that the Motion (Doc. No. 141) be **DENIED** and the Court certify that the appeal is not taken in good faith.

### NOTICE TO PARTIES

A party has fourteen days from this date to file written objections to the Report and Recommendation’s factual findings and legal conclusions. Failure to file written objections waives that party’s right to challenge on appeal any unobjected-to factual finding or legal conclusion the district judge adopts from

the Report and Recommendation. 11th Cir. R. 3-1.

**RECOMMENDED** in Orlando, Florida, on January 6, 2021.

  
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GREGORY J. KELLY  
UNITED STATES MAGISTRATE JUDGE

Copies to:

Presiding District Judge  
Counsel of record  
Unrepresented parties  
Courtroom Deputy